



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Election Misc Appli 21 of 2008

DANIEL MULI MATI.....1ST PLAINTIFF

WILSON MUTHOKA MUTUNGA.....2ND PLAINTIFF

JOSEPH MUMA.....3RD PLAINTIFF

JONAH MUTISYA IKUSYA.....4TH PLAINTIFF

VERSUS

THE TOWN CLERK MTITO-ANDEI TOWN COUNCIL.....1ST DEFENDANT

MTITO-ANDEI TOWN COUNCIL.....2ND DEFENDANT

RULING

The facts which gave rise to this litigation briefly may be stated:

The applicants were allotted plots 4, 11, 13, 18, 19, 21 and 25 by Mutito Andei Town Council. On 17th March 2008 the town Clerk to the Council issued a notice through the Daily Nation giving the applicants 13 days within which to pay registration and payment of plot dues failure of which the plots to be repossessed.

The said Notice read as follows:-

NOTICE TO REPOSSESS PLOTS IN THE FOLLOWING ZONES AS PER P.D.Ps

“Last warning is hereby issued through this paper to all those allottees with plots in Mtito-Andei that the Deadline for payment of registration and payment of plot dues will be on 31st March 2008. Those who will not have cleared by 1st April 2008 his/her plot stand repossessed. Please note no further warning will be issued.”

The exercise of re-allocation to serious developers will follow immediately.

1. All those 22 plots in zones 5/15 below Caltex Petrol Station and bearing plot Nos 1 – 22.

2. All those 36 plots in Zone 0/11 besides and behind Kenya Commercial Bank and next to Water Tank.
3. All those unregistered and undeveloped plots in Zone 01-06
4. All those plots in Zone 5/17 behind the Mosque and next to Handcraft Plot next to Kiambu Open Air Market.

The applicant upon reading of the said notice, filed this Chamber Summons on 31st March 2008 under Order LIII of the Civil Procedure Rules seeking orders:-

- (i) THAT the application be certified urgent and be heard on a priority basis.
- (ii) THAT leave be granted to the Applicants herein to apply for Order of Certiorari to remove into the High Court and quash the decision of the town Council of Mtito-Andei published in the Daily Nation Newspaper dated 17th March 2008.
- (iii) THAT the leave so granted do operate as a stay of execution/implementation of the orders/decision of the Town Council Mtito Andei published in the Daily Nation Newspaper on 17th March 2008.

In support of the application Daniel Muli Mati has sworn an affidavit giving grounds.

On 2nd April 2008 Mr. Kasyoka Counsel for the applicants appeared before Visram J who certified the application urgent, granted leave to apply for Judicial Review but declined to make an order that the leave so granted do operate as a stay of execution/implementation of the order/decision of the Council.

When Counsel appeared before me on 7th April 2008, he submitted that prayer (i) and (ii) of the Chamber Summons dated 3rd March 2008 had been granted by the Duty Judge and all that he sought was prayer (iii) an order that the leave so granted do operate as stay.

Before I consider the merits and demerits of this application I would like to state that it is not necessary to separate the two prayers. Once the court is satisfied that there is sufficient material to grant leave to apply for judicial review, then the property must be preserved by making an order that the leave so granted do operate as stay otherwise in the event the applicant succeeds the same will be rendered nugatory.

Counsel for the applicants further submitted that the Council has threatened to repossess the applicants' plots and if leave is not granted the Council will go ahead and repossess the applicant's plot.

The test as to whether leave should be granted to an applicant for judicial review is whether, without examining the matter in any depth, there is an arguable case that the relief might be granted on the hearing of the substantive application. The applicants having paid all the dues to the Council as well as the registration fees, they have an arguable case and which warranted leave as prayed. The applicants have also sought an order that the leave so granted do operate as a stay should follow. The property ought to be preserved until the application is heard and determined. Having considered the materials placed before me I am satisfied that the applicants have made out a case for the grant of an order that the leave so granted do operate as stay.

Costs of this application shall be costs in the cause.

Delivered and dated at Nairobi this 16th day May 2008.

J. L. A. OSIEMO

JUDGE